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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,602	11/13/2001	James E. Amonette	23-59244	2928

7590 07/14/2004
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EXAMINER

ROSENBERGER, RICHARD A

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AB

Office Action Summary	Application No. 10/002,602	Applicant(s) AMONETTE ET AL.	
	Examiner Richard A Rosenberg	Art Unit 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-29, 38-42, 47-50, 52 and 53 is/are allowed.
- 6) ☒ Claim(s) 1, 6, 8, 30-37, 43-46, 51 and 54-63 is/are rejected.
- 7) ☒ Claim(s) 2-5 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Art Unit: 2877

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

2. Claim 62 is are provisionally rejected under the judicially created doctrine of double patenting over what is claimed in copending Application No. 10/002,624. This is a provisional double patenting rejection since the conflicting claims have not yet been patented. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in this case are met by or are obvious over what is claimed in the other application. The other application using photoacoustic detection to measure samples in a microtiter plate; see claim 14 of the other application. It would have been obvious to calibrate the system of claim 14 of the other application because calibration of measuring instruments is a well-known technique which is used improve the accuracy of the measurements.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Fletcher et al (US 4,067,653).

Fletcher et al shows a photoacoustic system comprising vessel body having at least two sample cells (11,12) connected to the sample body. The cells have spaced between them (chamber 19, which is divided into two spaces by diaphragm 20). There is an acoustic detector (a differential microphone, column 3, lines 16-16 and line 37) which receives one acoustic detector from at least one of the sample cells. There is a material in the spaces (a gas) which will "enhance" transmission of the acoustic signal from the sample cell to the at least one detector.

The acoustic detector is affixed and connected to the body; see figures 2a and 2b, which shows in more detail how the elements of the microphone are affixed to the body. As it is connected to the body, it clearly is connectable to the body.

Art Unit: 2877

6. Claims 1, 6, 8, 30-37, 43-46, 51, 54-61 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitamori et al (US 4,738,536).

It is known in the art to include in a single arrangement a plurality of photoacoustic spectroscopy cells connected together in to a single instrument; see Kitamori et al, which shows embodiments with two cells (figure 4) and three cells (figure 7). The system has structure supporting the cells, and thus has a “body” to which the cells are supported and form a part; the cells do not float in the air unsupported. As the cells are “vessels” the body of which the cells are a part is a “vessel body”. There is are acoustic detectors acoustically coupled to the cells to receive acoustic waves from the cells. The reference does not disclose details of the choice of sample cells and acoustic detectors; any known sample cells and acoustic detector arrangement capable of detecting the signals of interest would have been obvious. Calibrating the instrument of Kitamori et al would have been obvious in order to gain the art-recognized benefits of such calibration.

7. The art does not appear to teach or suggest filling the spaces between the cells in a multiple cell arrangement of the sort claimed with a solid material that enhances transmission from the sample to the detector. Thus claims 2 and 3 contain allowable subject matter. The art does not appear to teach or suggest the use of one of more “acoustic fins” of the sort claimed, thus claims 4, 5 and 7 contain allowable subject matter, as do claims 9-16, 18-26, and 39. The art does not appear to teach or suggest the use of special arrangements designed to minimize reflections of the acoustic

Art Unit: 2877

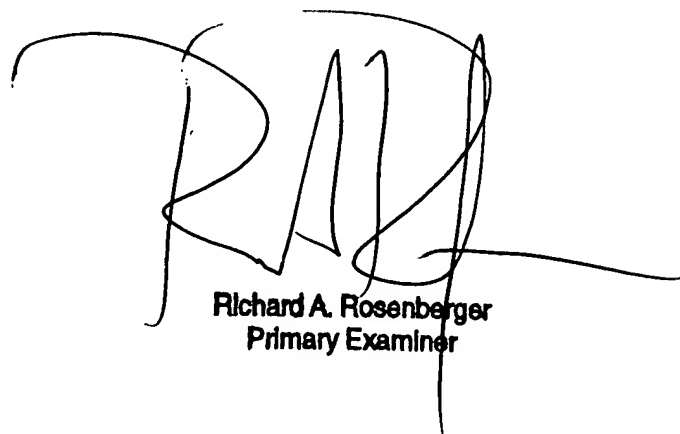
signals, nor the use of a "reflection collection bar" to receive the acoustic waves, and does not appear to teach or suggest the use of a reflective plate beneath the cells, the plate being transmissive to acoustic waves and reflective of light. Thus claims 17, 27-29, 47-50 and 52-53 are allowable. The art does not appear to teach the claimed structure with a centrally located "post collector". Thus claimed 38-42 are allowable. The art does not appear to teach the claimed use of a microtiter plate having multiple wells in a PAS system; thus claim 62 contains allowable subject matter; see however, the double patenting rejection above. Claims 2-7 above are objected to as being dependent upon unallowed claim and claims 9-29, 38-42, 47-50, 52-53 are allowable.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A Rosenberger whose telephone number is (571) 272-2428. The examiner can normally be reached on Monday through Friday during the hours of 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Toatley can be reached on (571) 272-2059. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

R. A. Rosenberger
12 July 2000



Richard A. Rosenberger
Primary Examiner